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10 Attorneys for Debtor

11
12 IN THE UNITED STATES BANKRUPTCY COURT
13 FOR THE DISTRICT OF OREGON

14 In re

15 McGrath's Publick Fish House, Inc.,
16 Debtor.

Case No. 10-60500-aer11

**DEBTOR'S MOTION FOR ORDER
AUTHORIZING PAYMENT OF
PREPETITION WAGES,
SALARIES, COMPENSATION,
EXPENSES, BENEFITS, AND
RELATED TAXES AND TO
CONTINUE EMPLOYEE BENEFITS
POSTPETITION**

***EXPEDITED HEARING
REQUESTED***

21
22 McGrath's Publick Fish House, Inc., as debtor and debtor-in-
23 possession ("Debtor") moves this Court for an order authorizing Debtor to pay prepetition
24 wages, salaries, compensation, expenses, benefits, and related taxes and to continue
25 employee benefits postpetition, and in support thereof states as follows:

26 * * *

1 1. On February 3, 2010 (the "Petition Date"), Debtor filed a voluntary
2 petition for relief under Chapter 11 of Title 11 of the United States Code.

3 2. Debtor has continued in possession of its property and is continuing to
4 operate and manage its business as debtor-in-possession pursuant to Sections 1107(a) and
5 1108 of the Bankruptcy Code.

6 3. The Court has jurisdiction over this matter pursuant to 28 U.S.C.
7 § 1334(b) and the standing order of reference of the District Court. This matter is a core
8 proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper under 28 U.S.C. §§ 1408 and
9 1409.

10 4. Debtor is an Oregon corporation, incorporated in 1980, that owns and
11 operates a chain of seafood restaurants, known as McGrath's Fish House. Since Debtor
12 opened its first restaurant 30 years ago, its business has grown to include 20 McGrath's Fish
13 House restaurants in Oregon, Washington, Idaho, Utah, Arizona, and Colorado. Debtor's
14 corporate office is in Salem, Oregon.

15 5. As of the Petition Date, Debtor employs approximately 1,025 people,
16 with an average payroll of approximately \$600,000 per 2-week period, including all taxes.

17 6. Debtor pays its hourly and salaried employees every other Thursday
18 for compensation earned for the two-week period ending on the preceding Sunday. Debtor's
19 last payroll was paid on January 28, 2010 for the two-week pay period ending January
20 24, 2010. The next regular payroll date is February 11, 2010 for the two-week pay period
21 covering January 25, 2010 through February 7, 2010. Accordingly, Debtor has incurred
22 unpaid prepetition obligations for wages, salaries, expenses, commissions, and other
23 employment compensation and benefits for the period between January 25, 2010 and the
24 Petition Date.

25 7. The total amount Debtor is obligated to pay for accrued and unpaid
26 prepetition wages, salaries, compensation, expenses, benefits and related taxes is

1 approximately \$409,616.90.¹ No individual is owed more than \$10,950 for prepetition
 2 wages, salaries, commissions or other compensation, including benefits. Debtor does not
 3 request authority to pay any person more than the \$10,950 amount of their priority claim as
 4 provided by 11 U.S.C. §§ 507(a)(4) and (a)(5).

5 8. Debtor requests that this Court enter an order, pursuant to
 6 Sections 105(a) and 507(a)(4) and (a)(5) of the Bankruptcy Code, authorizing Debtor to
 7 (a) pay to or for the benefit of its employees incurred prepetition wages, salaries,
 8 reimbursable employee business expenses, and other compensation on the regularly
 9 scheduled postpetition pay dates; (b) pay any and all local, state, and federal withholding and
 10 payroll-related taxes relating to prepetition periods, including, but not limited to, all
 11 prepetition withholding taxes, social security taxes, Medicare taxes, and unemployment
 12 taxes; (c) pay all court-ordered wage garnishments, including, but not limited to, child
 13 support and tax garnishments; (d) make accrued prepetition contributions or payments
 14 directly on account of employee benefits; (e) continue to honor earned but unused vacation
 15 and other benefits accrued prepetition; (f) continue existing employee benefits postpetition;
 16 and (g) direct all banks to honor prepetition checks or electronic transfers for payment of the
 17 prepetition claims and benefits described herein.

18 9. Debtor believes that in order to preserve, and potentially enhance, the
 19 value of its business as a going concern, it must honor its prepetition obligations to its
 20 employees. A failure to pay accrued wages, salaries, commissions, expenses, benefits, and
 21 other related obligations, or even a delay in such payment, would have a significant negative
 22 impact on employee morale and some employees may not report to work, thereby impairing
 23 Debtor's ability to continue operations.

24 * * *

25 _____
 26 ¹ This prepetition amount is estimated based on Debtor's daily average of \$40,961.69 for the
 last two payroll periods.

1 10. Debtor believes the requested relief will enable it to maintain its
 2 current operations without interruption and, at the same time, maintain employee morale.
 3 The employees are vital to Debtor's efforts to reorganize and provide essential services,
 4 without which Debtor would be unable to function. Without the relief requested, Debtor's
 5 ability to preserve its assets for the benefit of all creditors and equity security holders would
 6 be dramatically impaired, and Debtor's efforts to reorganize in a fashion that maximizes the
 7 value of Debtor's estate could be significantly impaired. Accordingly, the relief requested
 8 herein is consistent with Bankruptcy Rule 6003.

9 11. It is in the best interest of Debtor and its creditors for the above-
 10 described payments for wages, salaries, compensation, expenses, benefits, and related taxes
 11 to be paid for the reason that such payments will enable Debtor to continue to operate its
 12 businesses in the ordinary course.

13 12. Debtor has provided notice of this motion to the office of the
 14 U.S. Trustee, Debtor's secured creditors, and the holders of the 20 largest unsecured claims.
 15 An unsecured creditors' committee has not yet been appointed in this case. Further notice is
 16 impracticable and unnecessary due to the limited issues involved and the nature of the
 17 payments to be made.

18 13. A copy of the proposed Order is attached as Exhibit A.

19 WHEREFORE, Debtor prays that this Court enter an order authorizing Debtor
 20 to pay prepetition wages, salaries, compensation, expenses, benefits and payroll taxes, and

21 * * *

22 * * *

23 * * *

24 * * *

25 * * *

26 * * *

1 authorizing and ordering Debtor's Banks to honor any outstanding payroll checks or
2 electronic transfers.

3 DATED this 3rd day of February, 2010.

4 TONKON TORP LLP

6 By /s/ Leon Simson

Leon Simson, OSB No. 753429 (Lead Attorney)

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EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

McGrath's Publick Fish House, Inc.,

Debtor.

Case No. 10-60500-aer11

**[PROPOSED] ORDER
AUTHORIZING PAYMENT OF
PREPETITION WAGES,
SALARIES, COMPENSATION,
EXPENSES, BENEFITS, AND
RELATED TAXES AND TO
CONTINUE EMPLOYEE BENEFITS
POSTPETITION**

THIS MATTER came before the Court on Debtor's Motion for Order Authorizing Payment of Prepetition Wages, Salaries, Compensation, Expenses, Benefits, and Related Taxes, and to Continue Employee Benefits Postpetition ("Motion"). The Court has reviewed the Motion and finds that cause exists for the relief requested; NOW THEREFORE,

IT IS HEREBY ORDERED:

1. The Motion is granted.
2. Debtor is authorized to (a) pay to or for the benefit of its employees incurred prepetition wages, salaries, reimbursable employee business expenses, commissions,

Page 1 of 2 – [PROPOSED] ORDER AUTHORIZING PAYMENT OF PREPETITION WAGES, SALARIES, COMPENSATION, EXPENSES, BENEFITS, AND RELATED TAXES AND TO CONTINUE EMPLOYEE BENEFITS POSTPETITION

and other compensation on the regularly-scheduled postpetition pay dates; (b) pay any and all local, state and federal withholding and payroll-related taxes relating to prepetition periods, including, but not limited to, all prepetition withholding taxes, social security taxes, Medicare taxes, and unemployment taxes; (c) pay all court-ordered wage garnishments, including, but not limited to, child support and tax garnishments; (d) make accrued prepetition contributions or payments directly on account of employee benefits; (e) continue to honor earned but unused vacation and other benefits accrued prepetition; (f) continue existing employee benefits postpetition; and (g) direct all banks to honor prepetition checks or electronic transfers for payment of the prepetition claims and benefits described herein; provided, however, that no employee shall be paid more than the priority amount provided by 11 U.S.C. §§ 507(a)(4) and (a)(5).

IT IS FURTHER ORDERED that Debtor is authorized to use its existing bank accounts for this payroll and Debtor's banks are authorized and instructed to honor outstanding payroll checks and all prepetition and postpetition checks and electronic transfers for payment of the prepetition claims and benefits described above.

#

Presented by:

TONKON TORP LLP

By
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cc: List of Interested Parties

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Tonkon Torp LLP
888 SW Fifth Avenue, Suite 1600
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503-221-1440

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEBTOR'S MOTION FOR ORDER AUTHORIZING PAYMENT OF PREPETITION WAGES, SALARIES, COMPENSATION, EXPENSES, BENEFITS, AND RELATED TAXES AND TO CONTINUE EMPLOYEE BENEFITS POSTPETITION** on the parties indicated as "ECF" on the attached List of Interested Parties by electronic means through the Court's Case Management/Electronic Case File system on the date set forth below.

In addition, I served the foregoing on the parties indicated as "Non-ECF" on the attached List of Interested Parties:

☒ by faxing a copy thereof to each party at their last-known facsimile number and by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each attorney's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below; except Top 20 creditors Alderwood Mall LLC and RPP Bend I, LLC who were served via US mail and via electronic mail

☐ by causing a copy thereof to be hand-delivered to said attorneys at each attorney's last-known office address on the date set forth below;

☐ by sending a copy thereof via overnight courier in a sealed, prepaid envelope, addressed to each attorney's last-known address on the date set forth below; or

☐ by faxing a copy thereof to each attorney at his last-known facsimile number on the date set forth below.

DATED this 3rd day of February, 2010.

TONKON TORP LLP

By /s/ Leon Simson

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034434/00001/1964997v1

LIST OF INTERESTED PARTIES

In re: McGrath's Publick Fish House, Inc.,
U.S. Bankruptcy Court Case No. 10-60500-aer11

ECF PARTICIPANTS

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**TOP 20 (Not including deficiency
claimants already listed above)**

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Duck Delivery Produce Inc
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